UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

WEYERHAEUSER NR COMPANY

and **Case: 19-CA-156421**

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS

Rachel Cherem, Esq., for the General Counsel.

Richard N. VanCleave, Esq. (VanCleave & Cobrain),
for the Respondent.

DECISION

STATEMENT OF THE CASE

Gerald M. Etchingham, Administrative Law Judge. This case was tried in Portland, Oregon, on March 15, 2016, based on a July 21, 2015 charge and upon the complaint, and notice of hearing issued on November 30, 2015, by the Regional Director for Region 19, and further amended at hearing (complaint).

The complaint alleges that Weyerhaeuser Company (Respondent), violated Sections 8(a)(1) and (3) of the Act by discriminating in regard to the hire and tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization and employees, because the Charging Party Union Vice President Greg Pallesen (Charging Party or Pallesen) assisted the Union and engaged in concerted activities. Specifically, the General Counsel argues that Respondent acted unlawfully by revoking Union VP Pallesen's leave of absence, placing specific conditions on his return to work, and breaking his continuous service. The Respondent denies these allegations in its answer to the amended complaint.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from counsel for the General Counsel and Respondent, I make the following findings of fact.

I. JURISDICTION

Respondent admitted and I find that is a State of Washington corporation located in Federal Way, Washington, and with a facility located in Longview, Washington, where it

operates a paper and pulp mill. In the operation of the paper and pulp mill, during the last 12 months, Respondent has derived gross revenues in excess of $500,000 and has purchased goods and services valued in excess of $50,000 directly from points outside the State of Washington. Respondent further admitted and I find that it is an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admitted and I find that Association of Western Pulp and Paper Workers, (Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

BACKGROUND FACTS

Respondent and the Union have a long history of collective bargaining at Respondent's Longview, Washington paper mill where it produces copy paper and liquid packaging board. (Transcript[1] at pp. 74–75.) The Union represents Respondent's employees in Local 680, a unit of Respondent's R&W fine paper portion of the facility, which produces copy paper. In addition, Local 580 represents a unit of Respondent's energy and utility, maintenance, fiber line, and chip processing employees (Local 580 unit) at Respondent's L3 portion of the facility, which produces milk carton stock, also known as liquid packaging board. (Tr. 30–31, 67–68, and 74–75.) The R&W and L3 locations are about a 5 minute walk apart, and are part of the same large plant site at the facility. (Tr. 103.)

The Local 580 unit includes the Chips, Fiber line, Energy and Utilities (E/U), and maintenance departments. In 2001, the Union and Respondent entered into a site-wide maintenance agreement allowing for Local 680 employees to perform work under Local 580's jurisdiction. (Tr. 31, 67–68, 74.) The skill set required for an electrician/instrument (E/I) technician working on different products and equipment such as control processes, valves, pumps, and paper making systems and the dryer systems are virtually the same or very similar as they all function on the same principles. (Tr. 73, 75.)

The parties have been signatory to a series of CBA's, one of relevance being effective March 15, 2007, through March 14, 2014, with the most recent CBA having been negotiated during 2014 with a bargaining session of relevance taking place on February 24, 2014, and a successor agreement being reached, ratified, and applied retroactively in August 2014 for the term of March 15, 2014, through March 14, 2021.[2]

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[1] Abbreviations used in this decision are as follows: "Tr." for the transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; " Jt. Exh." for joint exhibit; "GC Br." for the General Counsel's brief and "R. Br." for the Respondents' brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based on my review and consideration of the entire record.

[2] No party in this case argues that this matter should be deferred to an arbitration proceeding for decision although there is a parallel grievance action pending. See *Babcock & Wilcox Construction Co.,* 361 NLRB No. 132 (2014) (*Babcock* applies in cases where the allegations claim a violation of 8(a)(1) and (3)). As stated above, this case alleges that Respondent committed such violations and the first unfair

Respondent admitted and I find that its management team of human resource manager, Diane Zolotko (Zolotko), assistant to the human resources director, Terri Hurley (Hurley), Human Resources Supervisor Bob Gallegos (Gallegos), and Respondent's collective-bargaining spokesperson and representative Brooks Burton (Burton) are supervisors and agents within the meaning of the Act. (GC Exhs. 1(e) at 3 and 1(g) at 1.)

PALLESEN'S WORK AS AN ELECTRICIAN AT RESPONDENT 1986-2003

Pallesen began working for Respondent in 1986 and worked his way up as an E/I technician and maintenance sharp-shooter from journeyman technician to a Technician 3, to Technician 2, and finally to a Technician 1. (Tr. 29–30.) Pallesen worked at Respondent as part of the Local 680 unit but his assignments occasionally brought him to work for Local 580 during down times as part of the site-wide maintenance agreement referenced above.

In 2003, Pallesen began working as a union official and took an extended leave of absence from his position as an E/I Technician with Respondent. (Jt. Exh. 3–4.) Pallesen has not worked as an E/I Technician 1 at the facility since 2003 but he credibly opined that he possesses a certain skill base that he has maintained over time and that with respect to both old and new paper industry equipment since 2003, he may or may not require some refresher training depending on where he is put at the plant site and the specific equipment he would oversee. (Tr. 70–74.) Pallesen further opined that the majority of Respondent's equipment at the mill where he worked is the same as when he left the facility in 2003. (Tr. 76-77.)

Respondent offered no specific persuasive evidence as to nature and scope that Respondent's capital investments or changes to its facility's equipment or instruments since 2003 would make Pallesen unqualified to return to his former position as an E/I Technician 1. I reject Respondent's Mill Manager Haynes' testimony as it was the product of Respondent counsel's leading questions and because it is vague and nonspecific that E/I Technician 1 employees, in particular, have experienced the most changes and require the most training. (Tr. 138–139.[3])

In 2004, Respondent closed a portion of its facility involving Local 680 work and Pallesen's position was transferred over to Local 580 for local maintenance. (Tr. 30–31, 67–69, 74.)

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labor practice charge was filed on July 21, 2015, which post-dates the December 14, 2014 issuance of *Babcock*. In any event, no party argues that this matter should be deferred to an arbitration proceeding.

[3] Haynes admittedly speculates: "Well, I guess if you look at the workforce I manage, the place where there's been the most changes and the most training to keep people up to speed on the equipment would be the E&I techs. Bearings, dryer cans, steel, and pipe hasn't [siq.] changed that much over the years, but if you look at the electronic control systems and the electronic equipment we have in the mill that the E&Is maintain, the pace of change has been dramatic. And you talk to the equipment vendors about how long they'll support some of this new equipment, it's hard to get a commitment. A lot of times it's five to seven years. If we were still running the same controls we had 15 years ago, we'd probably be out of business today." Tr. at 139.

IN 2003, PALLESEN'S CONTINUING LEAVE OF ABSENCES FROM RESPONDENT WHEN VOTED IN AND RE-ELECTED AS THE UNION'S INTERNATIONAL DIVISION VICE-PRESIDENT

As stated above, in 2003, Pallesen was voted in and took office with the Union's international division as its vice president. Pallesen mostly worked behind the scenes on the Union's pulp and paper industry issues, as political director and he assisted local units with grievances. Pallesen admitted and the Respondent agrees that prior to 2013, Pallesen's work as a union vice president rarely brought him into contact or interaction with Respondent or its management. (Tr. 41; R. Br. at 2.)

As union VP, Pallesen worked full time for the union VP office and was granted his first leave of absence by Respondent in 2003 pursuant to the parties' CBA's. (Jt. Exh. 1 at 54–55.) The 2003 and 2007 CBA's had virtually identical language covering leaves of absence for Respondent's union employees and provided[4]:

SECTION 33 – LEAVES OF ABSENCE FOR UNION BUSINESS

A. Upon written request of the Union giving two (2) weeks advance notice, the Company will grant an employee(s) elected or assigned to a full-time Union office a leave(s) of absence without pay for one term of office but not to exceed four (4) years or the termination of this [CBA] Agreement, whichever occurs earlier. Such leave of absence will be renewable for additional terms of office. Not more than two (2) employees shall be granted such leaves at the same time at the Mill, and no employee shall be granted more than one (1) such leave of absence during the period of his/her employment at the Mill.[5]

1. *Written confirmation of such leave(s) shall be provided to the employee, the Local Union, and the Union.*
2. *Seniority shall not be broken, but shall not accumulate during such leaves.*
3. *An employee must return to work or report his/her availability for work (if no work is available) at the end of his/her leave or within two (2) weeks following completion of the assignment for which the leave was granted, whichever is earlier. ...*

B. . . .

C. While on such leave(s) of absence, an employee(s) shall have the right and be subject to the conditions set forth in subsection C-2(d) of Section 20.

[4] Sec. 33 of the 2014 CBA was amended to extend an employee's leave of absence to 5-year terms in place of a 4-year term to better align with the 5-year union term of office which first began with Pallesen's term of office in January, 2007. See Jt. Exh. 2 at 53. Pallesen's first 5-year term office leave of absence went through with no objection by Respondent and was renewed in 2012. See Jt. Exhs. 5–8.

[5] A rational interpretation of the apparent inconsistent language between an employee's right to have his/her leave of absence period renewed "for additional terms of office" as Pallesen did in this case versus the latter provision saying that "no employee shall be granted more than one (1) such leave of absence during the period of his/her employment at the Mill" is that the latter provision pertains to nonconsecutive leaves of absence rather than renewed leaves of absence for the same office and the leave of absence which is limited to "no more than one (1) such leave of absence" shall pertain only to one specific union office and shall not allow an employee to receive more than one leave of absence period for more than one specific union office.

SECTION 20, C-2(d) – During the … leave of absence period, provided for herein, the employee's right to his/her job will be maintained, he/she will receive vacation pay if qualified under Section 23; will receive holiday pay if qualified under Section 7; and will be eligible for such Health and Welfare coverages as are available to the employee under the Health and Welfare Plan in effect during his/her absence.

On April 24, 2003, pursuant to this CBA language, the Union sent the Respondent's mill manager a written request for Pallesen's leave of absence as newly elected "Vice President of the Association of Western Pulp and Paper Workers to serve a four year term of office." (Jt. Exh. 3.) The letter further requested a 4-year leave of absence commencing on May 12, 2003, pursuant to the terms of the applicable CBA and the letter also requested a "letter of confirmation" in return. Id.

By letter dated April 29, 2003, Respondent confirmed Pallesen's leave of absence request and granted it for a 4-year term commencing on June 2, 2003. (Jt. Exh. 4.)

On January 2, 2007, the Union sent the Respondent's mill manager a written request for Pallesen's continued leave of absence as newly reelected "Vice President for the Association of Western Pulp and Paper Workers to serve a [now] five-year term of office." (Jt. Exh. 5.) Pallesen had been reelected to a new 5-year term of office as union vice president and the letter further requested a new *five-year leave of absence* commencing on January 25, 2007 [through January 24, 2012] pursuant to the terms of the applicable CBA and the letter once again requests a "letter of confirmation" in return. (Tr. 34; Jt. Exh.5.) (Emphasis added.)

By *undated* letter, Respondent's VP/mill manager, Frank Busch confirmed Pallesen's leave of absence request and purportedly granted it for *a four-year term* commencing on January 25, 2007. (Tr. 34; Jt. Exh. 6.) (Emphasis added.)

Four years from January 25, 2007 date referenced above came and went at the end of January 2011 with no written request from Respondent that Pallesen return to work as an employee. Pallesen continued to serve as union vice president for the remainder of his 5-year term of office without issue. (Tr. 33–35.)

On December 27, 2011, again pursuant to the CBA language, the Union sent the Respondent's human resources manager, Zolotko, a written request for Pallesen's continued leave of absence as reelected "Vice President for the Association of Western Pulp and Paper Workers to serve a[nother] five-year term of office." (Jt. Exh 7.) The letter further requested a *five- year leave of absence* commencing on January 26, 2012 [through January 26, 2017] pursuant to the terms of the applicable 2007 CBA and the letter once again requests a "letter of confirmation" in return. Id. (Emphasis added.)

By email dated January 5, 2012, Respondent's human resources representative, Gallegos, writes that Pallesen's leave of absence "is granted through March 14, 2014." (Jt. Exh. 8.) The email was sent to Pallesen, J. Hassey, Mike Silvery, and Tim Haynes of the Union and copied to Zolotko and Robbie Wilson, maintenance superintendent, for Respondent. Id. At the time, the March 14, 2014 date was the scheduled expiration date of the 2007 CBA when the agreement

would "be automatically renewed thereafter from year to year unless notice of desire to modify is given by either party…." (Jt. Exh. 1 at 62.)[6]

Soon thereafter, Pallesen had an afternoon conference call with Respondent's human resources officials, Gallegos, Chris Centers, and Zolotko to discuss the discrepancy between Pallesen's renewed request for an additional leave of absence term to mirror his newly added 5-year term of office as the Union's vice president and Gallegos' January 5 email stating that Pallesen's continued leave of absence was granted through March 14, 2014, "per the provisions of the Local 580 MLA Section 33—Leaves of Absence for Union Business A." (Tr. 36–37; Jt. Exhs. 7 and 8.) Pallesen testified persuasively at hearing that in January 2012, he explained to the group that it was the Union's understanding that neither Pallesen's renewed leave of absence nor that the 2007 CBA terminated on March 14, 2014. (Tr. 37–38.) Pallesen continued to explain to Respondent's officials that if the 2007 CBA was still in place and did not terminate, that his leave of absence continued for the remainder of his reelected term of office or through January 2017. Id.

HR Gallegos next responded to Pallesen saying that Pallesen's leave of absence was granted through March 14, 2014. (Tr. 37–38.) Pallesen next spoke and further explained that obviously, the Union disagrees with Respondent's position, and that if they took any action to say that leave was denied or to cancel Pallesen's additional leave of absence, that the Union would respond appropriately, either grieve it or seek other available avenues to resolve the issue. Id. Finally, HR Centers concluded by maintaining that Respondent is stating what is in the 2007 CBA. Id.

THE FEBRUARY 24, 2014 ORAL DISCUSSION BETWEEN UNION AND RESPONDENT ABOUT PALLESEN'S CONTINUING LEAVE OF ABSENCE AT CBA NEGOTIATIONS FOR SUCCESSOR 2014 CBA

In February 2014, the Union and Respondent commenced bargaining for a successor agreement to the 2007 CBA. On February 24, 2014, as part of Local 580's language agenda in the preliminary portions of bargaining, Jeff Anderson (Anderson) raises the issue of Pallesen's continuing leave of absence as item 1 at the bargaining table. (Tr. 107; GC Exh. 11; Jt. Exh. 18, ¶9; Jt. Exh. 9.[7]) Anderson raises this topic because he knew prior to the negotiations that the Union had lengthened out to 5 years their elected officials' terms of office and that the Union wanted to raise this issue so that the new 2014 CBA language for Leaves of Absence Section 33 could match or mirror the 5-year term of office and Pallesen asked Anderson to be sure that his leave of absence term was okay. (Tr. 107.)

[6] After the 2007 CBA's expiration date of March 14, 2014, either party could give notice to terminate the CBA but neither Respondent nor the Union ever gave notice to terminate or terminated the 2007 CBA. Tr. 38–39, 108.

[7] The stipulated February 24, 2014, recording of collective-bargaining negotiations between the Union and Respondent, Jt. Exh. 9, consists only of the relevant segment of the recording from 1 hour, 16 minutes, 40 seconds, to 1 hour, 22 minutes, 0 seconds. The parties stipulated and I find that the speakers in Jt. Exh. 9 are Union Negotiator Jim Anderson, Local 580 President and Bargaining Board Member Mike Silvery, and Respondent Negotiator Burton. This is the only occasion on which the Union and Respondent discussed Pallesen's union leave during bargaining.

As reflected in the recording of the bargaining session, Anderson asks to make sure both sides were clear that Pallesen's leave of absence was extended to January 2017 as the Union did not want Pallesen's continuing leave of absence to be an uncertain issue between the two sides. (GC Exh. 11; Jt. Exh. 9). Respondent's chief negotiator, Burton[8] says he is surprised to see the issue as a bargaining item, noting that the 2007 CBA speaks for itself in that regard, and wonders why the Union needs to extend Pallesen's leave. (Jt. Exh. 9.)

The parties looked at the existing language of the 2007 CBA, but neither Anderson nor Burton were sure of the parties' past practice and experience with regard to Pallesen's leaves of absence. (Jt. Exh. 9.) When Burton asked whether Pallesen's leave had been renewed during the term of the 7-year 2007 CBA, Local 580 President Mike Silvery replies that a renewal request was sent through Human Resources Representative Gallegos. (Jt. Exh. 9.)

Respondent's Burton again asks why it was on the bargaining agenda, (GC Exh. 11), and indicates that he does not believe it is a bargaining item. (Jt. Exh. 9.) Burton opines that if Pallesen's leave of absence needed to be renewed, he should simply renew it. (Jt. Exh. 9.) Anderson responds to Burton saying that the vice president of the Union [Pallesen] asked him for the leave of absence to get taken care of and Anderson wants to make sure it does. (Jt. Exh. 9.)

Burton next reminds Anderson of the rules and principles of bargaining, which state that asking for something means the requester is suggesting it does not already have it. (Jt. Exh. 9.) Respondent's Burton concludes the substantive portion of the discussion regarding Pallesen's leave of absence by stating that "both sides are sitting here operating under the assumption that [Pallesen's leave of absence] renewal has already taken place" as of February 24, 2014. (Jt. Exh. 9.)

The Union and Respondent never discussed Pallesen's leave of absence again during 2014 bargaining. (Jt. Exh. 18, ¶9.)

The March 14, 2014 expiration date allowed either party to give notice to terminate the 2007 CBA or it would automatically renew which it did as no party ever gave notice to terminate the agreement. (Tr. 38-39, 108-109; Jt. Exh. 1 at 62.) Pallesen understood his 5-year leave of absence from 2012 did not expire until 2017 because the 2007 CBA did not terminate and his term of office ran through 2017. (Tr. 80.)

The March 14, 2014 expiration date of the 2007 CBA came and went without any notice from Respondent to Pallesen that his leave of absence had ended or that Respondent believed that there was a business need for Pallesen to return to work. (Tr. 97.) In addition, Pallesen did not return to work within 2 weeks of March 14, 2014, and Respondent did not give notice to

[8] Burton is an admitted agent of Respondent, GC Exh. 1(g) at 1, and was Respondent's spokesperson for collective-bargaining negotiations with the Union, Tr. 109:16–17; Jt. Exh. 9; Jt. Exh. 18, par. 9, and, along with HR Manager Zolotko and Mill Manager Haynes, was copied with correspondence in late 2014 and early 2015 when Pallesen became active processing, settling, and requesting information from Respondent's management regarding a number of Union ULPs against Respondent. GC Exh. 6. As such, any prospective argument that spokesperson Burton did not have authority regarding Pallesen's leave is rejected. See Tr. 137.

Pallesen that his not returning to work at that time would lead to a break in service for Pallesen. Id.

As of July 2014, Respondent continued to list Pallesen as a Technician 1 on the monthly employee list Respondent sent to the Union. (GC Exh. 10.)

In August 2014, the 2014 CBA was finalized between the Respondent and the Union and ratified by Local 580, and applied retroactively for the 7-year successor term of March 15, 2014, through March 14, 2021. Anderson indicated that Burton and HR Manager Zolotko, and Respondent witness Haynes were all part of Respondent's bargaining team throughout negotiations. (Tr. 109.) As indicated above, the Leaves of Absence provision was amended to be a 5-year term to mirror the employee's term of office length which for Pallesen had changed in 2007 and been renewed in 2012. (See Jt. Exh/ 2 at 53.) As a result, the 2007 CBA never terminated and was rolled over to become the 2014 successor CBA.

On September 3, 2014, as per the February 24, 2014 oral discussions at bargaining table with Respondent and as a result of the changes to Section 33 Leaves of Absence language increasing the term of office to 5 years in the newly ratified 2014 CBA, Union President John Rhodes sends Human Resources Manager Zolotko a written request for Pallesen's continued leave of absence "to extend through January 2017, the completion of his term of office as Vice President." (Tr. 40-41; Jt. Exh. 10.) The "request is made in accordance with the Leaves of Absence section of the Labor Agreement between the parties." (Jt. Exh. 10.) Pallesen, Union Secretary Treasurer Hassey, and Respondent's manager Burton are copied with the letter.

Consequently, through the end of 2014, for more than a decade, Respondent and Pallesen have had no issue with Pallesen's use of his leave of absence. He remained on his leave of absence continuously from 2003 with additional elected terms of office and after the expiration of the 2007 CBA with no issues so far and his current term of office at the time scheduled to extend to January 26, 2017.

PALLESEN BECOMES AN ACTIVE PARTICIPANT IN THE UNION'S DISPUTES AGAINST THE RESPONDENT IN DECEMBER 2014 AND JANUARY 2015 REGARDING ALLEGED ACT VIOLATIONS AND INFORMATION REQUESTS TO RESPONDENT

As stated above, up through November 2014, Pallesen's work as a union vice president rarely brought him into direct contact or interaction with Respondent's management. (Tr. 41–42.) Beginning in December 2014, things changed in large part for Pallesen as he greatly increased his activity on behalf of the local unions directly interacting with Respondent—filing unfair labor practice charges, negotiating settlement of the large litigation case between Respondent and the local union employees before an NLRB administrative law judge, and pursuing information requests with Respondent's HR Manager Zolotko.

From December 2 through 5, 2014, Respondent and the Union were opposite each other before Administrative Law Judge John J. McCarrick in a case tried in Portland, Oregon, involving 7 consolidated cases and allegations against Respondent for violations under Sections

8(a)(1) and 8(a)(5) and (1) of the Act. *Weyerhaeuser Co.*, JD(SF)-12-15 (ALJ Decision McCarrick 3/25/15)(*Weyerhaeuser I*). (GC Exh. 7.)

On December 4, 2014, Pallesen begins to take a much more active direct role processing local union member's allegations of unfair labor practices with the Board and signs on behalf of the Union and files a charge against the Respondent in Case 19–CA–142302 on behalf of Respondent employee Becky Riley that alleges that Respondent's Employee Conduct Policy, Code of Ethics Policy, and its Electronic Media Policy are overly broad and illegal and that on or about August 5, 2015, Respondent unlawfully reprimanded union member Becky Riley with regard to her protected concerted activity of utilizing Respondent's email/intranet system to send out a safety related email. (Tr. 49; GC Exh. 2.) This charge further alleges that Respondent is violating Sections 8(a)(1), (3), and (5) of the Act by this conduct. Id.

Also on December 4, 2014, Pallesen signs and files another charge in Case 19–CA–142298, against Respondent on behalf of Union President Mark Slater alleging that Respondent has taken steps to retaliate against a union officer and to prevent a union officer from filing unfair labor practices as on November 3, 2014, Respondent issued a letter to Local Union President Slater stating that Local Union officer Lowell Lowgren "is once again attempting to bypass the negotiated language by using the National Labor Relations Board as a preferred method of addressing disputes, complaints, grievances, etc." (GC Exh. 3.) (These 2 ULP case filed by Pallesen on behalf of the local union members are together referred to hereafter as the December 2014 NLRB complaints.)

On December 12, 2014, Local Union Recording Secretary Lowell Lovgren sends an information request email to Respondent's human resources manager, Zolotko on the subject of Local 633 Union Business Request for leaves of absence to attend union business meetings various Local Union members. (GC Exh. 6 at 2–4.) This email is copied to Respondent Mill Manager Haynes and Bill Sauters.

Zolotko responds later in the day on December 12 to Lovgren's earlier email and she tells him that "I find this email purely of a harassing and bullying nature. I request that you, Lowell Lovgren and/or your agents and/or your fellow AWPPW Union Leaders, cease cyber bullying and cease cyber harassing me. You are on formal notice." (GC Exh. 6 at 2.) Zolotko's email response is copied to Mill Manager Haynes, Sauters, Respondent legal counsel Rick VanCleave (VanCleave), Scott Donaldson, and Mark Slater. Id.

On December 15, 2014, Pallesen steps in with an email to Respondent's Zolotko and Burton on the subject of "Weyerhaeuser—Harassing and Bull[y]ing [siq.] Company Policies Information Request and writes: "Diana [Zolotko], regarding the email string below; the email(s) from the Union are neither of a harassing and/or bullying nature. The email is an appropriate union leave request as provided for in the labor agreement, therefore the union is awaiting your answer regarding the December 12th, 2014 leave request and, if denied, the union[']s [siq.] requested information as included in the leave request. With that said, for ongoing purposes of the Labor Agreement, please see the attached Union information request regarding Weyerhaeuser harassing and bullying company policies." (GC Exh. 6 at 2.) Pallesen copies his email to Local Union Officers Anderson, Lovgren, and Slater. Id.

Later on December 15, 2014, Zolotko responds directly to Pallesen and Respondent's Burton and writes: "I find this email bullying and harassing and retaliatory in conjunction with this email string and related email strings." (GC Exh. 6 at 1–2.) This email is copied to Union Officials Anderson, Lovgren, and Slater and Respondent legal counsel VanCleave and Mill Manager Haynes. Id.

On December 16, 2014, I appointed Administrative Law Judge William Schmidt as settlement judge in *Weyerhaeuser I* to try and settle the proceeding after trial but before Judge McCarrick issued his decision in the case. (Tr. 50; GC Exh. 8.) Pallesen was directly involved with settlement discussions on these ULPs but prior to that, he was uninvolved and he did not have any direct contact. (Tr. 50.)

On December 23, 2014, Pallesen responds to Zolotko's December 15 email and writes to Zolotko and Burton that this email is "**Union 2nd Notice to the Company** giving you until **January 6th, 2015** to provide the previously requested information" and Pallesen attached the original information request. (GC Exh. 6 at 1.) (Emphasis in original.) Pallesen further writes to Zolotko and Burton requesting additional information from the Respondent basically asking Zolotko to explain what parts of the previous email(s) she found to be "bullying," "harassing," and "retaliatory." Id. This December 23 email is copied to Union Officers Anderson, Lovgren, Slater, and Respondent legal counsel VanCleave and Mill Manager Haynes. Id.

On December 29, 2014, Zolotko responds to Pallesen and Respondent's Burton with her email once again saying: "I find this email bullying and harassing and retaliatory and threatening in conjunction with this email string and related email strings." (GC Exh. 6 at 1.) This email response is copied to the same group as earlier. Id.

On request of the parties, on January 6, 2015, after the retirement of Judge Schmidt, I appointed Administrative Law Judge Mary Cracraft as settlement judge in *Weyerhaeuser I* to continue to try and settle the proceeding after trial but before Judge McCarrick issued his decision in the case. (GC Exh. 9.) Pallesen was directly involved with settlement discussions on these ULPs. (Tr. 50.)

PALLESEN'S LEAVE OF ABSENCE TO COMPLETE HIS TERM OF OFFICE AS UNION VICE-PRESIDENT IS UNEXPECTANTLY REVOKED BY RESPONDENT'S HUMAN RESOURCES MANAGER ZOLOTKO

By February 1, 2015, Respondent had not filled Pallesen's vacant Technician 1 position and at no time from 2012 through February 3, 2015, had Respondent informed Pallesen that his leave of absence as vice president of the Union had terminated. (Tr. 53, 58; GC Exh. 10.)

From 2012 to February 2, 2015, no one from Respondent informed Pallesen that his union leave of absence had expired. (Tr. 41, 58.) In addition, by February 2, 2015, this lack of action on Respondent's part, combined with its past custom and practice of allowing Pallesen the full term for his leaves of absence, combined with Respondent's statements at bargaining and the plain meaning of Section 33 of the 2007 CBA, gave the Union every reason to believe that the parties were operating under the assumption that Pallesen's leave was still fully in effect, just as had occurred in 2011. (Jt. Exh. 12.)

On February 3, 2015, after Pallesen's heightened direct involvement with Respondent and Zolotko in December 2014 and January 2015 trying to resolve ULPs, litigation, and information gathering, Respondent's human resources manager, Zolotko, writes a letter to the Union President Rhodes purportedly in response to Rhodes' September 3, 2014 letter 5 months earlier regarding Pallesen's renewed leave of absence extension through January 2017, the completion date of Pallesen's second 5-year term of office as vice president as provided in the 2014 CBA. (Jt. Exh. 10; Jt. Exh. 11.) Instead of confirming Pallesen's leave of absence extension through *January 2017* to mirror the recently signed and ratified 2014 CBA language and the completion date of Pallesen's 5-year term of office just the same as Respondent had done in 2012, Zolotko's letter says:

> … I apologize for the delayed response. Mr. Pallesen's leave expired on March 14, 2014; the expiration date of the previous collective bargaining agreement with AWPPW Local 580.[9] As previously discussed with the 580 bargaining board, the Company declines your request to extend Mr. Pallesen's leave through January 2017. However, the Company will extend Mr. Pallesen's leave from March 15, 2014 through *February 22, 2015*, per Section Section 33; subsection A of the contract, this letter will constitute written confirmation of that leave.

(Jt. Exh. 11.) (Emphasis added.) This letter was copied to Mill Manager Haynes, Maintenance Superintendent Robbie Wilson, Burton, and various union officials. Id.

RESPONDENT'S ACTIONS TO ACCELERATE PALLESEN'S RETURN TO WORK AND LOSS OF BENEFITS AFTER HIS LEAVE OF ABSENCE WAS REVOKED

On February 9, 2015, the Union by Rhodes responds to Respondent's sudden revocation of Pallesen's leave of absence by stating that Union President Rhodes was "surprised and disappointed" by Respondent's "decision not to extend Mr. Pallesen's leave through January 2017 as provided in the labor agreement" and the letter requests a new extension date of *June 30, 2015,* in place of the February 22 date to allow Pallesen "sufficient notice and lead time for him to transition successfully and to minimize the disruption and hardship you [Respondent] is causing in connection with Mr. Pallesen's departure from the AWPPW Union position he has held for a number of years" and had renewed twice previously without issue. (Jt. Exh. 12.) The letter from Rhodes to Zolotko further notes that the Union is grieving this revocation decision as a violation of the CBA. Id.

The letter also points out the odd timing of Respondent's revocation of Pallesen's leave of absence having taken 5 months from the Union's September 3, 2014 clarification request concerning Pallesen's leave of absence status through January 2017 as well as Respondent's revocation decision being inconsistent with Respondent's past custom and practice along with being in conflict with the terms of the CBA for leaves of absence for union representatives like

[9] It is undisputed that the parties never terminated the 2007 CBA on March 14, 2014, and Respondent's use of the inconsistent wording "expiration date" in Zolotko's 2/3/15 letter ignores the clear and plain "termination date" language in Sec. 33 of the 2007 CBA. See JX 2 at 53.

Pallesen. Id. The letter further points out that the Union is unaware of any "pressing staffing or personnel needs that require Mr. Pallesen's immediate return" to Respondent and that if Pallesen was needed on staff the Respondent "would not have ignored this matter for five months." Id. The letter was copied to Burton and Haynes for Respondent and Anderson and Pallesen for the Union. Id.

On February 10, 2015, Zolotko responds to Rhodes in writing and confirms Respondent's earlier position that Pallesen's last leave of absence expired on March 14, 2014, and states that Respondent "is willing, on a non-precedent setting basis, to reinstitute and extend Mr. Pallesen's leave through March 15, 2015, so that he can return-to-work [siq.] on March 16, 2015." (Jt. Exh. 13.) The letter further adds the requirement to Pallesen that on his return to work on *March 16, 2015*, Pallesen must attend "the new hire orientation process to provide a smooth and safe transition back into his maintenance role." Id. The letter further states that Respondent is currently staffing up the maintenance department in anticipation of upcoming turnover related to retirements and/or maintenance employee(s) otherwise leaving the Company and that 4 new maintenance employees are scheduled to start work February 16, 2015, with the next group of new hires starting on March 16, 2015. Id. This letter is copied to Burton and Haynes as usual as well as Respondent's human resource generalist, Hurley, and Maintenance Superintendent Wilson as well as 5 union representatives including Pallesen. Id.

On February 20, 2015, Pallesen signs and files a grievance with Respondent's maintenance superintendent ,Wilson, alleging violation of the Labor Agreement, Section 33 – A and seeking the rescission of Zolotko's February 3, 2015 letter revocation of his leave of absence. (Jt. Exh. 14.)

Also on February 20, 2015, as part of the grievance procedure step 1 response from Respondent, it writes that Pallesen's earlier grievance settlement request for rescission of Zolotko's February 3 revocation of Pallesen's leave of absence is not satisfactory to the Respondent because the "grievance [is] not timely" and the Respondent does not believe that CBA Section 33-A was violated but, instead, "it was followed." Id.

By Return To Work letter dated February 23, 2015, Respondent's human resource generalist, Hurley, writes to Pallesen to confirm his "return to work on March 16, 2015 as a Journey E/I technician position" at a pay rate of $29.34 per hour and further states that **"[a]s you last worked over 10 years ago, your employment is contingent on the successful completion of a physical and drug screen.** (Jt. Exh. 15.) (Emphasis in original.) The letter further informs Pallesen that he should report to Gate 10 at 8 a.m. and that at that time: (1) his picture will be taken and he will be issued an employee gate access card; (2) he will watch a safety video; and (3) he will be provided directions on what to do next. Id. Finally, the letter further informs Pallesen to bring the following on his First Day: (1) valid driver's license or valid picture id; (2) Social Security Card or other acceptable documents (such as a passport) to complete an I-9 form; and (3) a voided check to set up direct deposit for paychecks. Id.

On March 9, 2015, Rhodes writes to Zolotko and informs her that given the nature of Pallesen's elected position and the length of time required to resolve his grievance through arbitration, Pallesen "will be unable to report to work [on March 16, 2015] until an arbitrator determines he is required to do so under the terms of the parties' CBA." (Jt. Exh. 16.) The letter

further explains the Union's approach by stating that by reporting to work before an arbitrator's decision is rendered, Pallesen "would leave vacant a critical elected position within the Union's national leadership [and i]t would deprive my Union and its members the right of their elected official [and i]t would deprive Mr. Pallesen of the opportunity to fulfill the duties he was elected to carry out" and should an arbitrator rule in the Union's favor sometime in the future, there would be no way for an arbitrator to "remedy either of these harms." Id. The letter concludes by pointing out to Zolotko that "if Mr. Pallesen were to return on March 16 the Union would be required to conduct a special election to replace him as Vice President [b]ut again, if the Union prevails before the arbitrator he would not be able to order a remedy as there would be no elected position for Mr. Pallesen to return to." Id. The letter is copied to the usual officials for Respondent and the Union as referenced above.

On March 17, 2015, Respondent, by HR Generalist Hurley, writes to Pallesen to notify him that pursuant to the requirements of "Exhibit C, Section 1.77(iv) and Section 33.A.3 of the [2014] Collective Bargaining Agreement your continuous service with the Company is considered broken effective this date." (Jt. Exh. 17.)

Consequently, in a 1 and 1/2-month period in early 2015, after more than 10 years on leaves of absence, and straight from 2 active months directly interacting with Respondent through Managers Zolotko and Burton in protected concerted activities, Pallesen was informed by Respondent that he would need to return to work immediately from his leave of absence as a union vice president, at a lower position and lower rate of pay after completing a drug test, physical, orientation, and providing right to work identification. By March 17, 2015, Pallesen had his continuous service tenure broken. In addition, after regularly reimbursing Pallesen for his steel-toed shoes when on leave of absence from 2003-2014, Respondent stopped reimbursing Pallesen for this cost in 2015 and 2016. (Tr. 62-63.)

Pallesen credibly pointed out that he is unaware of any employee at Respondent returning from union leave of absence who was also required to take a drug test as a condition of their return. (Tr. 62.)

PALLESEN'S FURTHER WORK PROSECUTING AND SETTLING THE DECEMBER 2014 NLRB COMPLAINTS

On March 23, 2015, the Regional Director of Region 19 at the NLRB issued an order consolidating cases, consolidated complaint, and notice of hearing against Respondent setting trial for August 11, 2015, in the matter previously referred to as the December 2014 NLRB complaints after adding one further charge known as Case No. 143581 to the prior 2 cases filed by Pallesen on December 4, 2014. The third charge against Respondent was filed with HR Manager Zolotko on December 29, 2014. (GC Exh. 4.)

Pallesen continued his direct involvement in the December 2014 NLRB complaints and he participated in settlement negotiations throughout 2015 until the matters settled through a signed Settlement Agreement on August 3–4, 2015, where Pallesen's initials and signature appears throughout on behalf of the Charging Parties in his capacity of vice president of the Charging Party Union and Respondent's current legal counsel, Mr. VanCleave, also signs the Settlement Agreement on behalf of Respondent. (Tr. 46–47; GC Exh. 5.)

Since 2004, Pallesen remained classified as a Technician 1 in Respondent's engineering LG department by Respondent and he is the only employee listed in that department. (Tr. 56; GC Exh. 10 at 8.) No evidence was presented that Respondent ever tried to backfill Pallesen's position at any time since 2004. Id.

ANALYSIS

A. Witness Credibility

A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op at 7 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness's testimony. *NLRB v. Universal Camera Corp*., 179 F.2d 749 (2d Cir. 1950).

In evaluating the various different versions of events, I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have considered the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; consistencies or inconsistencies within the testimony of each witness and between witnesses with similar apparent interests. See, e.g. *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Testimony or other evidence in contradiction to my factual findings has been carefully considered but discredited. Where there is inconsistent evidence on a material point, my credibility findings are incorporated into my legal analysis below.

I found Pallesen to be a credible witness as to his job duties and familiarity with the equipment and systems at Respondent, the events taking place while he was on leave of absence, especially his union activities in December 2014 and 2015. He testified in a frank and steady manner as to his understanding of the Section 33 Leaves of Absence provisions and his surprise that Respondent abruptly revoked his leave of absence in its human resource manager's February 3, 2015 letter. This February 3, 2015 letter came in the middle of his term of office at a time when he expected the leave of absence to mirror his current 5-year term of office as union vice president through January 2017 as Respondent had previously granted to him for the years 2007–2012 and as reflected in the changed language of Section 33 in the 2014 CBA. On cross-examination, his testimony was only challenged by vague and speculative questions concerning the Region 19 Regional Director's decision not finding merit with a 8(a)(5) charge. As such, I have credited Pallesen's testimony.

I also found Union officer Anderson's testimony to be generally credible as to his recollection of his attempt to clarify Respondent's CBA negotiator Burton's position for Respondent as to Pallesen's leave of absence status in a February 24, 2014 bargaining session

given the unclear email from HR Manager Gallegos in 2012. I credit Anderson's testimony as corroborated by the 2/24/14 recording (Jt. Exh. 9) or supported by documentary evidence.

I did not find Respondent Manager Haynes' testimony credible. He required prompting by Respondent's legal counsel and he gave speculative responses as mentioned above to whether Pallesen remained a qualified E/I Technician 1 at Respondent. I credit Haynes' testimony only where it is inherently plausible, corroborated by another credible witness, or supported by the documentary evidence.

B. Section 10(b) Does Not Bar the Amended Complaint In this Matter

As stated above, the key language here from the parties' 2007 and 2014 CBAs involves a benefit to union employees that mandates that an elected union official employees receive leaves of absence to conduct union business as long as a CBA is not terminated for the full term of office whether it be the original term of office or a renewed one. (Jt. Exhs. 1 and 2 at 53–54.) Once again, the mandatory relevant language of these CBA sections are that *upon written request of the Union, the Company will grant an employee(s) elected or assigned to a full-time Union office a leave(s) of absence without pay for one term of office but not to exceed four (4) years,* [*and five (5) years for Pallesen beginning in 2007,*] *or the termination of this CBA Agreement, whichever occurs earlier and that such leave of absence will be renewable for additional terms of office*. Id. (Emphasis added.)

I find that at no time did any of the 2007 or 2014 CBAs in this case terminate. The 2007 CBA contained an automatic extension from year-to-year thereafter, absent reopening by one party or the other after the March 14, 2014 expiration date. (Jt. Exh. 1 at 62.) it is undisputed that no one gave notice of a desire to terminate any CBA. In August 2014, the 2014 CBA was finalized between the Respondent and the Union and ratified by the Union and applied retroactively for the 7-year successor term of March 15, 2014, through March 14, 2021, with no lapse of CBA at any time while Pallesen was on his union leave of absence.

Historically before February 2015, Respondent granted Pallesen his leaves of absence to mirror his actual terms of office whether it be his initial 4-year term from 2003—2007 or his renewed 5-year terms from 2007—2012 or from 2012—2017.

Respondent granted Pallesen's 5-year leave of absence beginning in 2007 to mirror a the Union's changed and increased term of office from 4 to 5 years despite Respondent's first inconsistent written notice that it was only granting Pallesen a 4-year leave of absence commencing on January 25, 2007, through 2011. (See Jt. Exhs. 5–6.) Specifically, when Pallesen was re-elected to a new 5-year term of office in January 2007, the Union informed Respondent of this and requested a renewed leave of absence for Pallesen from January 25, 2007, through January 25, 2012. (Jt. Exh. 5.) Respondent never clearly followed-up its position that Pallesen's leave of absence had expired as of January 25, 2011, despite Respondent's undated writing which is inconsistent with Pallesen's 5-year term of office and provides that Pallesen is granted only a 4-year leave of absence commencing January 25, 2007. (Jt. Exh. 6.)[10]

[10] It is reasonable to assume that if Respondent believed that Pallesen's leave of absence was to expire

Similarly and consistent with his 5-year term of office set to expire in January 2012, the Union writes to Respondent in December 2011, and informs Respondent that Pallesen has been re-elected to another 5-year term of office and requests a renewed leave of absence pursuant to Section 33 of the CBA from January 26, 2012, through January 26, 2017. (Jt. Exh. 7.) Again, Respondent never clearly expressed the position that Pallesen's leave of absence had been revoked as of March 14, 2014, despite Respondent's January 5, 2012 email from HR Manager Gallegos which is inconsistent once again with Pallesen's 5-year term of office and vaguely provides that Pallesen is granted leave of absence under Section 33 of the CBA through March 14, 2014, the automatic renewal date of the 2007 CBA. (Jt. Exh. 1 at 62; Jt. Exh. 8.) As stated above, the 2007 CBA never expired, lapsed, or terminated and it was rolled into and replaced by the 2014 CBA which contains the new 5-year term of office at Section 33. (Jt. Exh. 2 at 53.) Prior to February 2015, Respondent again never took the position that Pallesen's leave of absence had been revoked as of March 14, 2014.

When Pallesen, through Anderson, attempted to clarify the ambiguity and inconsistency between Section 33 CBA language that arose out of Respondent's second inconsistent response to Pallesen's 5-year term of office at the February 24, 2014 bargaining session, Respondent's bargaining agent Burton led Pallesen to believe that his leave of absence would continue as it did in the past to mirror his entire term of office through January 2017—the full 5-year term of office from when Pallesen was last re-elected as vice president in January 2012. (Jt. Exh. 9.) March 14, 2014, came and went without any notice from Respondent that Pallesen's leave of absence was revoked. [11]

The new 2014 CBA was finalized and ratified in August 2014. On September 3, 2014, the Union writes to Respondent to confirm what took place at a bargaining session earlier in the year that Pallesen's leave of absence would continue as it did in the past for his entire term of office through January 2017, which mirrors the new 2014 CBA language for Section 33 Leaves of Absence. (Jt. Exh. 10.) Prior to Pallesen's protected concerted activities in December 2014 and early 2015 filing ULPs, seeking requested information from HR Manager Zolotko or attempting to settle various ULP complaints against Respondent, Respondent never took the position that Pallesen's leave of absence had terminated as of March 14, 2014, and Respondent did not respond to the Union's September 3, 2014 letter at any time later in 2014.[12]

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4 years after January 2007, Respondent would have provided some form of written notice to Pallesen or the Union soon after any January 2011 leave of absence revocation. This was not done in 2011 or any time thereafter. Consequently, despite Respondent's letter (Jt. Exh. 6) saying that Pallesen's leave of absence would expire in January 2011, it did not and the leave of absence was renewed again pursuant to Sec. 33 of the CBA in 2012.

[11] Once again, it is reasonable to assume that if Respondent believed that Pallesen's leave of absence terminated on March 14, 2014, Respondent would have sent some form of written notice to Pallesen or the Union soon after any purported March 14, 2014 leave of absence revocation. This was not done at any time in 2014.

[12] It is also reasonable to assume that if Respondent believed that Pallesen's leave of absence terminated on March 14, 2014, Respondent would have sent some form of written notice to Pallesen or the Union that Pallesen's leave of absence had terminated soon after this September 3, 2014 letter. This was not done at any time in 2014.

I draw an adverse inference against the Respondent for failing to call Respondent's supervisors and agents Gallegos or Zolotko as witnesses to establish or corroborate Respondent's alleged belief that Pallesen's leave of absence terminated on March 14, 2014 or to defend Zolotko's motivation for her actions involving Pallesen in late 2014 and early 2015. See *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent).

In sum, it was Respondent's and Pallesen's regular custom and practice to allow Pallesen's renewed leave of absence to extend throughout the length of his entire 5-year terms of office beginning in 2007 despite Respondent's two written responses granting Pallesen less than his requested 5-year leave of absence commencing on January 25, 2007 (Jt. Exh. 6) and an email in January 2012 (Jt. Exh. 8) again granting Pallesen's renewed 5-year leave of absence request for less than 5 years. Respondent took no action from January 2011 to 2012 to revoke Pallesen's leave of action from 2007 tied to his 5-year term of office and Pallesen had no reason to believe that Respondent would deviate from its prior custom and practice and deny Pallesen his full leave of absence from 2012 to 2017 that mirrored his re-newed 5-year term of office in 2012.

Respondent's February 3, 2015 letter giving notice to Pallesen of his revoked leave of absence improperly changed this regular custom and practice and the only thing that had changed leading up to the February 3, 2015 letter from Respondent's bargaining team member and HR Manager Zolotko was that Pallesen had become active in prosecuting, settling, and directly interacting with Zolotko, Burton, and Respondent's legal counsel with respect to allegations that Respondent's had committed unfair labor practices against union employees at Respondent.

Respondent alleges in its answer that any claim that Pallesen's leave of absence did not terminate on March 14, 2014, is barred by Section 10(b) of the Act.[13] The General Counsel disputes this and argues that under the unique circumstances here, the statute of limitations should commence with Respondent's February 3, 2015 notice letter to the Union regarding the revoked status of Pallesen's leave of absence which did not mirror his current 5-year term of office as union vice president which runs through January 2017.

Section 10(b) states in pertinent part that "[n]o complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." The 10(b) period begins only when a party has "clear and unequivocal" notice of a violation of the Act. See e.g., *Desks, Inc*., 295 NLRB 1, 11 (1989). The burden of showing a complaint is time barred is on the party raising Section 10(b) as an affirmative defense. *Chinese American Planning Council*, 307 NLRB 410 (1992), review denied mem. 990 F.2d 624 (2d Cir. 1993). This burden is met by showing the filing party had actual knowledge or constructive knowledge

[13] Respondent's posthearing brief contains an untrue statement that the Union and the Regional Director also dismissed an 8(a)(5) charge against Respondent because it was similarly untimely filed by Pallesen. R. Br. at 6–7. Instead, the 8(a)(5) charge was withdrawn as the Regional Director did not find merit with the charge. Tr. 100–102. No evidence was presented at hearing that the 8(a)(5) charge was barred by Sec. 10(b) of the Act.

of the alleged unfair labor practice more than 6 months prior to the filing of the charge. Such knowledge may be imputed where the conduct in question was sufficiently "open and obvious" to provide clear notice. *Duke University*, 315 NLRB 1291 fn. 1 (1995), distinguishing *Southeastern Michigan Gas Co*., 198 NLRB 1221 fn. 2 (1972), enfd. 485 F.2d 1239 (6th Cir. 1973) (clear notice given because changes made openly). "Similarly, knowledge may be imputed where the filing party would have discovered the conduct in question had it exercised reasonable or due diligence." *M&M Automotive Group, Inc*., 342 NLRB No. 128 at 1244, 1246 (2004).

Here, I find that the complaint allegations are not barred by Section 10(b). Respondent's January 5, 2012 email to Pallesen was only a preliminary indication of Respondent's intent not to follow the clear, applicable CBA provision at Section 33 and it did not trigger the Section 10(b) period. See *Leach Corp.*, 312 NLRB 990, 991 (1993) (Employer's statement of intent to commit an unfair labor practice does not start the 10(b) period when the employer stated its intention not to apply the bargaining agreement.) Pallesen credibly testified that in January 2012, he explained to the Respondent's human resource management group that it was the Union's understanding and position of Section 33 of the CBA that Pallesen's renewed leave of absence would continue for his full 5-year term of office if a CBA remained in place as of March 14, 2014. (Tr. 37–38.) Pallesen continued to explain to Respondent's officials in January 2012 that if a CBA was still in place and did not terminate, that his leave of absence continued for the remainder of his reelected term of office or through January 2017. Id.

Moreover, I further find that Respondent's January 5, 2012 conditional email from HR Manager Gallegos to Pallesen and other union officials (Jt. Exh. 8) saying that Pallesen's requested leave of absence "is granted through March 14, 2014" is unclear and indeterminable. As shown above, this email notice is contrary to the plain meaning of Section 33 Leaves of Absence provision of the 2007 CBA and conditional and not unequivocal because the March 14, 2014 date mentioned was tied to an ambiguous event—the date allowing either party to give notice to terminate the 2007 CBA or it would automatically renew — an event that was uncertain to occur and, in fact, never materialized at any time as the 2007 CBA rolled into the 2014 CBA without any lapse period. As a result, the March 14, 2014 date, which was obviously tied to the conditional termination of the 2007 CBA, did not make either the January 5, 2012 email or the March 14, 2014 date itself a final unconditional adverse employment decision revoking Pallesen's leave of absence.

I further find for the following reasons that the terms of the 2007 CBA were partially satisfied and Respondent's lack of a clear and timely response to Pallesen's diligent inquiries in February and September 2014, entitled Pallesen to reasonably believe that it was business as usual and that his 5-year leave of absence continued until his 5-year term of office expired in January 2017: (1) the fact that Respondent had previously allowed Pallesen's leave of absence to mirror his 5-year term of office and run through January 2012 despite Respondent's letter to the contrary informing Pallesen that his leave of absence was granted only through January 25, 2011 (Jt. Exh. 6); (2) Respondent's historic policy of leniency in permitting Pallesen's leave of absence to mirror his 5-year term of office rather than any of Respondent's stated shorter time period; and (3) Respondent's failure to respond in a clear and timely manner to Pallesen's reasonably diligent inquiries at the February 24, 2014 bargaining session[14] or in response to the

[14] Once again, Respondent's Burton concludes the substantive portion of the discussion regarding

Union's September 3, 2014 letter until February 3, 2015, after Pallesen had become very active directly with Respondent's management handling the Union's ULP actions against Respondent; and (4) the plain meaning of Section 33 Leaves of Absence in the CBA that required an employee's renewed leave of absence extend and mirror the term of office held by the re-elected employee or end when a CBA was terminated by the parties.

As a result, I find that Respondent has not proven by a preponderance of evidence that the 10(b) period commenced on or before March 14, 2014, the date of Respondent's conditional notice of a possible March 14, 2014 date allowing either party to give notice to terminate the 2007 CBA which never materialized, and that the final adverse event which initiated that 10(b) period and revoked Pallesen's leave of absence was HR Manager Zolotko's February 3, 2015 letter to Union President Rhodes regarding Pallesen's leave of absence. (Jt. Exh. 11). Consequently, I find that Pallesen's July 21, 2015 charge was timely filed in this case.

C. THE 8(A)(1) AND (3) ALLEGATIONS – RESPONDENT'S DISCRIMINATORY TREATMENT OF UNION VICE PRESIDENT GREG PALLESEN

Complaint paragraphs 6(c) and 6(g)-(i) and 7-8 allege that Respondent violated sections 8(a)(1) and (3) of the Act by extending Pallesen's leave of absence only to March 16, 2015, ending reimbursement for steel-toe shoes in 2015, requiring that Pallesen go through new hire orientation and take a physical exam and drug screen for an entry level position of Journey E/I Technician at the reduced pay rate of $29.34 per hour, and having his continuous service record broken. (Tr. 13-14.) The complaint further alleges that by discriminating against Pallesen, Respondent has acted illegally in regard to the hire and tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization by employees, because Pallesen assisted the Union and engaged in protected concerted activities.[15] Id.

Respondent argues that there is not a scintilla of evidence to support the allegation that Respondent believed Pallesen engaged in protected concerted activity. Respondent further contends that it was simply following the terms of the 2007 CBA when it denied Pallesen his leave of absence through January 26, 2017, and required him to return to work first on March 15, 2014, then on February 22, 2015, and finally on March 16, 2015. For the reasons discussed herein, I conclude that Pallesen's engaging in protected union activities was a motivating factor

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Pallesen's leave of absence by stating that "both sides are sitting here operating under the assumption that [Pallesen's leave of absence] renewal has already taken place" as of February 24, 2014. (Jt. Exh. 9.) Pallesen and the Union reasonably believed this to mean that Pallesen's leave of absence was good through January 2017, as was requested in 2011, the same treatment he received from Respondent regarding his 5-year leave of absence request in 2007. See J. Exhs. 5–7.

[15] Respondent's allegation that the complaint seeks a determination that Respondent violated the Act through either its January 5, 2015 email or the passing of March 14, 2014, is without merit. R. Br. at 1–2, 6-7, and 11-12. The General Counsel uses those events as background foundation and argues here that it was only after Pallesen's protected concerted activities in late December 2014/early 2015 that led to Respondent's adverse actions that began with its February 3, 2015 notice to Pallesen that his leave of absence was being revoked. See amended complaint paragraphs 6 (c), 6(g)–6(i), , and 7–8. Tr. 13-14.)

in the revocation of his leave of absence prior to January 26, 2017, and that this revocation and all that followed were unlawfully motivated by Respondent's management.

Moreover, as explained below, I find that Pallesen openly engaged in protected union activities with Respondent's management, including HR manager Zolotko and Manager Burton along with its legal counsel in December 2014 and early 2015 and that the Respondent knew of Pallesen's protected union activities, and harbored animus towards those activities when it revoked Pallesen's leave of absence beginning with the February 3, 2015 letter from HR Manager Zolotko and that Respondent's additional actions ending reimbursement for Pallesen's steel-toe shoes in 2015, requiring that Pallesen go through new hire orientation and take a physical exam and drug screen for an entry level position of Journey E/I Technician at the reduced pay rate of $29.34 per hour, and having his continuous service record broken also evidence antiunion animus.

In analyzing whether an alleged adverse employment action is unlawful, the Board applies the mixed motive analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under Wright Line, to establish unlawful discrimination on the basis of union activity, the General Counsel has the burden of proving by a preponderance of the evidence that antiunion animus against protected conduct was a substantial or motivating factor in the adverse employment action.

Under that analysis, the General Counsel must prove that an employee's union or other protected activity was a motivating factor in the employer's action against the employee by demonstrating that: (1) the employee engaged in union activity; (2) the employer had knowledge of that union activity; and (3) the employer harbored anti-union animus. See, e.g., *Consolidated Bus Transit,* 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). Proof of animus and discriminatory motivation may be based on direct evidence or inferred from circumstantial evidence. *Robert Orr/Sysco Food Services,* 343 NLRB 1183, 1184 (2004); *Ronin Shipbuilding*, 330 NLRB 464 (2000). Once the General Counsel makes this initial showing, the burden of persuasion shifts to the employer to prove as an affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity. *Manno Electric*, 321 NLRB 278, 283 fn. 12 (1996), enfd. mem. 127 F.3d 34 (5th Cir. 1997).

In the instant case, I further find that Pallesen engaged in what Respondent knew was protected concerted activity in December 2014 and early 2015, the first times he engaged directly with Respondent while on his leaves of absence. Through Pallesen's December 23, 2014 email to HR Manager Zolotko, he was giving Zolotko until January 6, 2015, to provide the Union's requested information in connection with earlier ULPs. (GC Exh. 6 at 1.) Pallesen told Zolotko that if she did not provide requested information to him on behalf of the Union by January 6, 2015, the Union will proceed to take all necessary steps to get the requested information. Id. HR Manager Zolotko responds this and Pallesen's other protected concerted activities on February 3, 2015, by abruptly revoking his 5-year leave of absence. (Jt. Exh. 11.)

Here, I find the first two prongs of the *Wright Line* analysis have been proven because Pallesen's union activities in December 2014 and early 2015: (1) filing unfair labor practice charges against Respondent; (2) working directly with Respondent's management and the Board

attempting to settle with Respondent's legal counsel Mr. VanCleave a variety of ULP claims against Respondent including *Weyerhaeuser I* and the December 2014 NLRB complaints; and (3) requesting information for the Union directly in correspondence to Respondent's managers Zolotko and Burton, were protected concerted activities known to Respondent through Zolotko, Burton and its legal counsel Mr. VanCleave. I further find Respondent's arguments contrived that Pallesen's newfound protected union activities were merely "token" and that Respondent somehow had no knowledge of Pallesen's union activities in late 2014/early 2015 despite his direct dealings with HR Manager Zolotko, the author of the February 3, 2015 letter which abruptly announced the end of Pallesen's leave of absence term, as well as Respondent manager Burton and Respondent's legal counsel Mr. VanCleave.

As a result, this case is decided by whether the General Counsel has proven that Respondent harbored any antiunion animus when it issued its February 3, 2015 notice letter concerning Pallesen's revoked leave of absence. It is distinguishable from cases in which the Board did not find discriminatory denial of long-term union leave. In *Providence College*, 340 NLRB 966, 967-969 (2003), for example, the Board affirmed an administrative law judge who found that the College did not violate section 8(a)(3) by granting a 1-year union leave of absence instead of a 18-month leave of absence as there was no proof of animus involved in the decision to grant only one year of leave and because the specific language of the CBA in that case allowed the College the discretion to deny the entire leave of absence if it so chose.

Here, unlike the facts in *Providence College*, however, the plain meaning of the language of Section 33 in the relevant CBA's do not provide Respondent with any discretion about when to grant Union leave of absence for long-term union positions. Specifically, the CBA's here simply provide that Respondent "will grant" leave(s) of absence and they do not allow Respondent any discretion to deny leaves of absence based on Respondent's operational needs or otherwise. The granted union office leaves of absence to Respondent employees end only when the CBA goes away or the employee's term of office ends, whichever occurs first with the right to renew if an employee is re-elected, as was Pallesen in this case.

More importantly, for the reasons that follow, there is proof of antiunion animus in this case which was also missing from the facts in *Providence College* where the person who denied the leave of absence request at issue in that case actually testified at hearing. Here, HR Manager Zolotko, the author of the February 3, 2015 letter giving notice to Pallesen that his leave of absence would no longer run to January 2017, did not testify at hearing.

The Board relies on both circumstantial and direct evidence in determining whether the conduct in question was unlawfully motivated. *Fluor Daniel, Inc*., 311 NLRB 498 (1993). Several factors, including evidence of suspicious timing, false reasons given in defense, failure to adequately investigate alleged misconduct, departures from past practices, and disparate treatment of the discharged employees all support inferences of animus and discriminatory motivation. *Medic One, Inc*., 331 NLRB 464, 475 (2000).

In this case, the General Counsel met her initial burden of showing that antiunion motivation played a part in the Respondent's decision to revoke Pallesen's leave of absence beginning with its February 3, 2015 letter and continuing thereafter through Respondent's March 17, 2015 letter to Pallesen. The *suspicious timing* of Respondent's February 3, 2015 adverse

letter notice action against Pallesen abruptly revoking his leave of absence closely follows his new protected union activities in December 2014/early 2015. Once again, there is no credible dispute that Pallesen was engaged in union activity protected by Section 7 of the Act when he filed ULP charges for union employees in December 2014, participated in settlement negotiations for the Union with respect to a variety of ULP claims against Respondent in December 2014 and early 2015, and he took over the Union's information request that I find was met by HR Manager Zolotko with unusual antiunion animus in December 2014, where Zolotko alleges to Pallesen that simple information requests from the Union were somehow "bullying and harassing and retaliatory and threatening" leading to her first adverse act of revoking Pallesen's leave of absence in February 2015.[16] (See GC Exh. 6 at 1-2; Jt. Exh. 11.)

In addition, as stated above, from December 2 through 5, 2014, Respondent and the Union were opposite each other before Administrative Law Judge John J. McCarrick in a case tried in Portland, Oregon. On March 25, 2015, Judge McCarrick ruled that Respondent and Human Resources Manager Zolotko had illegally suspended Respondent employee Collins in retaliation for Collins' protected concerted activity and that HR Manager's Zolotko's reasons for suspending Collins were found by Judge McCarrick to be baseless and mere pretext thereby supplying the unlawful motivation for Respondent's suspension of Collins. *Weyerhaeuser Company*, JD(SF)-12-15 at 7–8 (ALJ Decision McCarrick 3/25/15) (*Weyerhaeuser I*). (GC Exh. 7.) That case is currently on appeal with the Board.

Respondent has filed exceptions to Judge McCarrick's decision in *Weyerhaeuser I*, which remain pending, and thus his findings are not final. Nevertheless, it is appropriate to consider and rely on those findings as proof that Respondent's Zolotko harbored antiunion animus as the same time as some of the relevant facts in this case. The issues decided by Judge McCarrick were fully litigated and relitigating or revisiting those issues *de novo* in this related proceeding, while the matter is before the Board, would be antithetical to judicial efficiency and economy and potentially lead to inconsistent results and unnecessary delays. See *Wynn Las Vegas, LLC*, 358 NLRB No. 81 fn. 1 at 4–5 (2012) (Board affirmed judge's ruling that the respondent company was precluded from re-litigating lawfulness of suspension, an issue fully litigated and decided by another judge in a prior case, even though that decision was pending before the Board on exceptions); *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 394–395 (1998), enfd. mem. 215 F.3d 1327 (6th Cir. 2000) (judge relied on another judge's findings in an earlier case as evidence of animus even though the case was pending before the Board on exceptions).

Judge McCarrick's specific findings of fact are adopted here based on the evidence before him leading to his 2015 decision currently on review at the Board. I also adopt his legal findings and conclusions as reasonable and reliable that HR Manager Zolotko was unlawfully motivated against another union employee to create antiunion animus that I find overlaps the facts in this case. I further find that since Zolotko harbored antiunion animus in the recent past, it

[16] Once again, Zolotko did not testify at hearing to explain why she believed these garden variety information requests from the Union were "bullying and harassing and retaliatory and threatening" to her nor did she explain to Pallesen's written inquiry to her as to why she felt this way about the generic information requests. At hearing, Respondent presented no evidence as to what, if anything, it considered to be bullying, harassing, retaliatory, or threatening regarding these straightforward garden variety request for time off for local officials' leave and related information requests.

is more likely than not that her antiunion animus continued in late 2014 and early 2015 during her interactions with Pallesen.

I further find that Zolotko's later February 10, 2015 letter (Jt. Exh. 13) continuing to revoke Pallesen's leave of absence term to a date less than January 2017 and also requiring that Pallesen return to work by attending a new hire orientation process that no other employee returning from a leave of absence was required to attend is further evidence of HR Manager Zolotko's antiunion animus. I also find that more evidence of Respondent's antiunion animus in HR Generalist Hurley's February 23, 2015 letter to Pallesen (Jt. Exh. 15) that further escalates Respondent's discriminatory treatment of Pallesen as this letter for the first time informs Pallesen that not only is his leave of absence revoked and he has been reduced to a new hire status but now Respondent was requiring that Pallesen also take a physical exam and drug screen for an entry level position of Journey E/I Technician at the reduced pay rate of $29.34 per hour. This treatment deviated from how other employees returning to Respondent from a leave of absence were treated and also deviates from the specific language of the CBA which maintains an employee's seniority and job status while on leave of absence. (See Jt. Exh 1 at 55.)

As stated above, Respondent further punished Pallesen by deviating from its annual reimbursement of Pallesen for his steel-toe shoe expense. He received this benefit from 2003-2014 with no delay but Respondent stopped this payment completely in 2015 and 2016 after Pallesen's protected concerted activities in late 2014 and much of 2015. Finally, as additional evidence of Respondent's antiunion animus, HR Generalist Hurley's March 17, 2015 letter to Pallesen (Jt. Exh. 17) notifies him that his continuous service with Respondent "is considered broken" effective on March 17, 2015.

Also as referenced above, it was Respondent's and Pallesen's regular custom and practice to allow Pallesen's renewed leave of absence to extend throughout his entire 5-year terms of office beginning in 2007 despite Respondent's two written responses granting Pallesen less than his requested 5-year leave of absence. These inconsistent responses started with Respondent's undated letter saying that Pallesen's leave of absence was granted for 4 years commencing on January 25, 2007 (Jt. Exh. 6) and the second written response was an email in January 2012 (Jt. Exh. 8) again vaguely granting Pallesen's renewed 5-year leave of absence request for less than 5 years. Respondent took no action from January 2011 to 2012 to revoke Pallesen's leave of action tied to his 5-year term of office expiring in January 2012 and Pallesen had no reason to believe that Respondent would deviate from its prior custom and practice and deny Pallesen his full leave of absence from 2012 to 2017 that mirrored his new 5-year term of office in 2012.

Instead, *Respondent deviated from its prior treatment* of Pallesen as Respondent's February 3, 2015 letter improperly changed this regular custom and practice and the only thing that had changed leading up to the February 3, 2015 letter from Respondent's bargaining team member and HR Manager Zolotko was that Pallesen had become active in prosecuting, settling, and directly interacting with Zolotko, Burton, and Respondent's legal counsel, with his protected concerted activities. I find that this departure from Respondent's past practices with Union Vice President Pallesen further supports an inference of animus and discriminatory motivation by Respondent. See *Medic One, Inc*., 331 NLRB 464, 475 (2000).

A finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel. *Limestone Apparel Corp.,* 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). Thus, if the evidence establishes that the reasons given for the respondent's action are pretextual, the respondent fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and there is no need to perform the second part of the *Wright Line* analysis. *Rood Trucking, Co*., 342 NLRB 895, 898 (2004); *Golden State Foods Corp.,* 340 NLRB 382, 385 (2003).

Respondent's *Wright Line* defense fails as it has presented no evidence why it deviated from its prior history from 2003–2012 of twice allowing Pallesen his full term leaves of absence which each time mirrored his full term of office as union vice president. Respondent's unexplained abrupt deviation from its past custom and practice treatment for Pallesen's leave of absence which followed the plain meaning of Section 33 Leaves of Absence in the applicable CBA's outweigh Respondent's baseless argument that its equivocal and unclear January 5, 2012 email should rule the day as this email only vaguely references the granting of Pallesen's leave of absence tied to a speculative March 14, 2014 date/event in the middle of Pallesen's current term of office. Once again, the March 14, 2014 date mentioned was tied to an ambiguous event—the date allowing either party to give notice to terminate the 2007 CBA or it would automatically renew — an event that was uncertain to occur and, in fact, never materialized at any time as the 2007 CBA rolled into the 2014 CBA without any lapse period.

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Thus, I further find that given Respondent's antiunion animus and its deviation from past practice with Pallesen's full term leaves of absence, the reasons asserted for Respondent's adverse action revoking Pallesen's leave of absence on February 3, 2015, soon after he participated in protected union activities, are baseless. See *Lucky Cab Co*., 360 NLRB No. 43 (2014); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003), rev. denied 2004 WL 210675 (D.C. Cir. 2004) (inference of unlawful motive drawn from inconsistencies between the proffered reasons for discipline of employer's other actions, disparate treatment of employees with similar work records or offenses, deviations from past practice, or proximity of discipline to union activity).

I further find Respondent's contrived arguments that Pallesen's protected union activities in later 2014 and 2015 were merely "token" and that Respondent somehow had no knowledge of Pallesen's protected concerted activities in late 2014/early 2015 despite his direct dealings with HR Manager Zolotko, the author of the February 3, 2015 letter which abruptly announced the end of Pallesen's leave of absence term, are further pretext. (See R. Br. at 11–12.) Zolotko held the unreasonable position that the Union's garden variety information request handled by Pallesen was bullying harassment is further evidence of pretext. These were garden variety information requests typical between an employer and union sharing a CBA. In addition, Respondent's baseless position that Pallesen's involvement with its legal counsel, Mr. VanCleave, in serious settlement negotiations in a variety of ULP charges against Respondent, is somehow not imputed as Respondent's knowledge is additionally false.

As stated above, I find that the evidence here establishes that the reasons for Respondent's adverse actions against Pallesen which began with Respondent's February 3, 2015 letter are pretextual and that the Respondent fails by definition to show that it would have taken

the same action, absent Pallesen's protected conduct, and there is no need to perform the second part of the *Wright Line* analysis in this case.

The General Counsel made a prima facie case of discrimination under Wright Line by demonstrating that Pallesen engaged in union and protected activity and Respondent had knowledge of these activities. The General Counsel further established strong evidence of animus toward Pallesen's union and protected activities. The burden then shifted to Respondent to persuade by a preponderance of the credible evidence that it would have taken the same actions in the absence of the protected conduct. Respondent has failed to meet this burden. Therefore, I find that Respondent violated sections 8(a)(1) and (3) of the Act by extending Pallesen's leave of absence only to March 16, 2015, ending reimbursement for steel-toe shoes in 2015 and 2016, requiring that Pallesen go through new hire orientation and take a physical exam and drug screen for an entry level position of Journey E/I Technician at the reduced pay rate of $29.34 per hour, and having his continuous service record broken. I further find that by discriminating against Pallesen, Respondent has acted illegally in regard to the hire and tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization by employees, because Pallesen assisted the Union and engaged in protected concerted activities.

CONCLUSIONS OF LAW

1. Respondent Weyerhaeuser Company has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(1) and (3) and Sections 2(6) and (7) of the Act:

(a) Cutting short or denying the complete Union leave of absence for employee and Union Vice President Greg Pallesen through January 26, 2017, or any other elected union official who must take leave as provided under the parties' contract or by past practice.
(b) Requiring Pallesen to return to work at a lower position with a lower rate of pay.
(c) Requiring Pallesen to complete a drug test, physical exam, and orientation upon return from his union leave of absence.
(d) Not reimbursing Pallesen for the cost of steel-toes shoes for the years 2015 and 2016 as Respondent had done in the years 2003-2014.
(e) Breaking Pallesen's continuous service as a result of having been on union leave of absence.
(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, Respondent shall be ordered to cease and desist from refusing to allow employee Greg Pallesen's leave of absence term to extend fully through January 26, 2017, and Respondent shall be ordered to rescind any requirement that Pallesen return to work at a lower position with a lower rate of pay than his former position as an E/I Technician 1, rescind any requirement that Pallesen complete a drug test, physical exam, and orientation upon return from his union leave of absence, or in any way be treated as a new hire, and cease and desist from or in any manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

The recommended Order will also require that Respondent make employee Greg Pallesen whole for any loss of wages and benefits suffered as a result of Respondent's discriminatory treatment in its refusal to extend Pallesen's leave of absence through January 26, 2017, and its treatment of Pallesen as a new hire rather than maintaining his seniority and the status quo for Pallesen being an E/I Technician 1, including reimbursement for safety steel-toed shoes and any impact on his pension, because Respondent revoked or refused to extend his union leave of absence and took the position that he had a break in service, rescind any break in Pallesen's continuous service as an employee of Respondent. Reimbursed funds to Pallesen shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010), enf. denied on other grounds sub. nom., *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

The Respondent shall also be required to expunge from its files any and all references to any demoted position for Pallesen or any break in his continuous service as an E/I Technician 1, and to notify Pallesen and the Regional Director of Region 19 in writing that this has been done and that neither the shortened leave of absence, wrongful demotion, or the wrongful break in service will be used against him in any way. The Respondent shall also post the notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

[17] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

Respondent, Weyerhaeuser Company, located in Federal Way, Washington, and with a facility located in Longview, Washington, its officers, agents, representatives, successors, and assigns shall:

1. Cease and desist from

(a) Cutting short or denying the complete union leave of absence for employee and Union Representative Greg Pallesen or any other elected union official who must take leave as provided under the parties' contract or by past practice.

(b) Requiring Pallesen to return to work at a lower position with a lower rate of pay.

(c) Requiring Pallesen to complete a drug test, physical exam, and orientation upon return from his union leave of absence.

(d) Not reimbursing Pallesen for the cost of safety steel-toed shoes for the years 2015 and 2016 as Respondent had done in the years 2003-2014.

(e) Breaking Pallesen's continuous service as a result of having been on union leave of absence.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days, restore Pallesen's union leave of absence to the end date of his term of office, as requested by the Union, with all attendant benefits, and rescind his break in continuous service.

(b) Restore Pallesen's seniority and all attendant benefits as if there had been no break in service and make Pallesen whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, including reimbursement for safety steel-toed shoes and any impact on his pension.

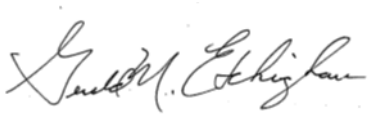
(c) Within 14 days, notify Pallesen in writing that his leave of absence has been restored and his service is continuous and that Respondent's unlawful discrimination against him will not be used against him as the basis of any future personnel actions, or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office or reference seeker, or otherwise used against him.

(d) Within 14 days after service by the Region, post at its Longview, Washington, facility ("facility") copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director from Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by other material. If Respondent has gone out of

business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at the facility at any time since February 2015.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2016



Gerald M. Etchingham
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

After a trial at which we appeared, argued, and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post this notice to employees and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT revoke or refuse to extend your union leave of absence or take the position that you have a break in service because of your union membership or support.

WE WILL NOT require you to return to work at a lower position with a lower rate of pay because of your union membership or support.

WE WILL NOT require you to complete a drug test, physical exam, or orientation because of your union membership or support.

WE WILL restore employee and AWPPW International Vice President Greg Pallesen's union leave of absence, with all attendant benefits, and rescind his break in service, and **WE WILL** notify Greg Pallesen in writing that this has been done and that the break in service will not be used against him in any way.

WE WILL pay Greg Pallesen for the wages and other benefits he lost, including reimbursement for safety steel-toed shoes and any impact on his pension, because we revoked or
refused to extend his union leave of absence and took the position that he had a break in service.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WEYERHAEUSER CORPORATION

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-122853 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.